IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KURT BORENS	§	
	§	
	§	**CIVIL NO.____________**
VS.	§	
	§	
	§	
D. COURTNEY CONSTRUCTION, INC.	§	

PLAINTIFF'S ORIGINAL COMPLAINT

I. JURISDICTION AND PARTIES

1. Jurisdiction of this Court is invoked pursuant to Section 107(a) of the Americans with Disabilities Act (hereinafter "ADA"), 42 U.S.C. § 12117, which incorporates by reference § 706 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, providing for relief against discrimination on the basis of disability in employment.

2. All conditions precedent to jurisdiction under § 706 of Title VII, 42 U.S.C. § 2000e-5(f)(3), have occurred or been complied with:

(a) a charge of employment discrimination on the basis of disability was filed with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the commission of the unlawful employment practice alleged herein.

(b) A Notification of Right to Sue was received from the EEOC on August 20, 2016.

(c) This Complaint has been filed within 90 days of receipt of the EEOC's Notification of Right to Sue.

3. Plaintiff, Kurt Borens, is a citizen of the United States and the State of Texas who resides in Panola County, Texas.

4. All the discriminatory employment practices alleged herein were committed within the State of Texas.

5. Defendant, D. Courtney Construction, Inc. (hereinafter "Courtney Construction"), has continuously been and is doing business in Panola County, Texas. COURTNEY CONSTRUCTION may be served by delivering a copy of the Complaint to its registered agent for service, Incorp Services, Inc., 815 Brazos, Suite 500, Austin, TX 78701.

6. COURTNEY CONSTRUCTION is a "person" within the meaning of § 101(7) of the ADA, 42 U.S.C. § 12111(7), and § 701 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

7. COURTNEY CONSTRUCTION is engaged in an industry that affects commerce within the meaning of Section 101(7) of the ADA, 42, U.S.C. § 12111(7), and Section 701 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

8. COURTNEY CONSTRUCTION employs 15 or more employees and is an "employer" within the meaning of Section 101(5)(A) of the ADA, 42 U.S.C. § 12111(5)(A).

II. STATEMENT OF FACTS

9. Plaintiff was employed from August 19, 2015 until December 8, 2015 by Courtney Construction as a truck driver. In late November 2015, Plaintiff was diagnosed with prostate cancer. On December 7, 2015, Plaintiff delivered a letter to his supervisor, Shawn Smith and also to Wendy L. Jones, a letter from his doctor informing the company that he would be having surgery on December 9, 2015 and that he would be unable to perform my duties for approximately 6 weeks.

10. On December 9, 2015, Plaintiff had his cancer surgery as scheduled. A week or so later, Plaintiff went to Courtney Construction and spoke to Wendy Jones who told him that he had been terminated from his job with Courtney Construction because he was unavailable for work due to his cancer surgery. By letter dated December 28, 2015, from Wendy Jones, Plaintiff worked for Defendant from August 19, 2015 to December 8, 2015.

III. CLAIMS FOR RELIEF

(A) Americans with Disabilities Act

11. From the time of Plaintiff's diagnosis, Plaintiff has been an individual with a "disability" within the meaning of Section 3(2) of the Americans with Disabilities Act, 42 U.S.C. § 12102(2). More particularly, Plaintiff has a physical impairment that substantially limits one or more of his major life activities, has a record of such an impairment, and was regarded by COURTNEY CONSTRUCTION as having such an impairment.

12. Plaintiff is a "qualified individual with a disability" as that term is defined in § 101(8) of the ADA, 42 U.S.C. § 12111(8). More specifically, Plaintiff is an individual with a disability who, with reasonable accommodation, can perform the essential functions of his job as a truck driver at COURTNEY CONSTRUCTION.

13. Despite his request for time off, COURTNEY CONSTRUCTION refused to make reasonable accommodation to Plaintiff.

14. COURTNEY CONSTRUCTION's failure to make reasonable accommodation to Plaintiff's physical disability constitutes discrimination against Plaintiff with respect to terms, conditions, or privileges of employment. COURTNEY CONSTRUCTION's actions constitute a violation of Section 102(b)(5)(A) of the ADA, 42 U.S.C. § 12112(b)(5)(A).

15. COURTNEY CONSTRUCTION failed to undertake any good faith efforts, in consultation with Plaintiff, to identify and make a reasonable accommodation with Plaintiff.

16. In failing to make reasonable accommodation to Plaintiff's physical disability, COURTNEY CONSTRUCTION acted with malice or with reckless indifference to the federally protected rights of Plaintiff.

IV. DAMAGES

17. As a direct and proximate result of Courtney Construction's discrimination on the basis of disability and violation of the ADA, Plaintiff has suffered lost wages and benefits and lost employment opportunities.

18. Defendant's failure to make reasonable accommodation to Plaintiff has caused, continues to cause, and will cause Plaintiff to suffer substantial damages for pecuniary losses, mental anguish, loss of enjoyment of life, and other non-pecuniary losses.

19. Defendant intentionally inflicted extreme emotional distress upon Plaintiff by intentionally discharging Plaintiff on the basis of his disability. Plaintiff has suffered extreme emotional distress, embarrassment, severe disappointment, indignation, shame, despair, and public humiliation due to Defendant's discharge of Plaintiff.

20. Plaintiff's harm was a result of the Defendant's actual malice or reckless indifference to Plaintiff's protected rights, thus Plaintiff seeks exemplary damages.

21. Plaintiff is entitled to recover his reasonable and necessary attorney's fees pursuant to 42 U.S.C. § 2000e.

22. Plaintiff demands trial by jury.

V. RELIEF REQUESTED

23. Plaintiff requests the judgment of this Court against Defendant, COURTNEY CONSTRUCTION as follows:

(a) Find and hold that Plaintiff has suffered from Defendant's acts of discrimination on the basis of his disability;

(b) Order that Plaintiff be awarded the back pay he would have earned, with related monetary benefits and interest thereon, had he been reinstated to his position;

(c) Order that COURTNEY CONSTRUCTION reasonably accommodate Plaintiff;

(d) Award Plaintiff compensatory damages in an amount to be determined at trial of this matter;

(e) Requiring Defendant pay to Plaintiff damages for mental distress imposed upon Plaintiff through and as a result of the aforementioned discriminatory acts;

(f) Award Plaintiff his attorney fees, including litigation expenses, and the cost of this action; and

(g) Grant such other and further relief as may be just and proper.

Respectfully submitted,

___/s/________________________________

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